

Decision **DRAFT DECISION OF ALJ WETZELL** (Mailed 1/12/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**OPINION ON PETITION OF PACIFIC GAS AND ELECTRIC COMPANY
FOR MODIFICATION OF DECISION 05-10-042**

1. Summary

The uncontested petition of Pacific Gas and Electric Company (PG&E) for modification of Decision (D.) 05-10-042 is granted. The prohibition on reselling and re-trading import capacity is lifted.

2. Background

D.05-10-042 ordered implementation of the Commission's resource adequacy requirements (RAR) policy framework. Under this program, the three large California investor-owned electric utilities (IOUs) as well as electric service providers (ESPs) and community choice aggregators (CCAs) (collectively, load-serving entities or LSEs) are required to demonstrate that they have acquired the capacity needed to serve their forecast retail customer load and a 15-17% reserve margin. The program begins with "year-ahead" RAR compliance filings that are due on January 27, 2006 for the period that begins in June 2006.

In a prior decision in the first RAR phase of this proceeding (D.04-10-035), the Commission addressed the extent to which an LSE's acquired resources can qualify towards meeting that LSE's RAR obligations. Among other things, it determined that qualifying resources must pass certain "deliverability" screens

that were to be developed in Phase 2. D.04-10-035 adopted a proposal by the California Independent System Operator (CAISO) to conduct a baseline analysis to determine the deliverability of qualifying resources, and it directed that consideration of alternatives for allocating import capacity among LSEs be taken up in the second RAR phase of this rulemaking. (D.04-10-035, pp. 31-32.)

D.05-10-042 adopted the third of three alternative proposals that were identified in the Phase 2 Workshop Report for allocating the CAISO-determined level of import capacity to LSEs. The decision described the adopted Option 3 as follows:¹

3. Allocate import capacity according to each LSE's share of CAISO system peak load. LSEs would assign their total intended RAR use to specific import paths and provide that information to the CAISO. The CAISO would then determine if the LSE's shares are feasible. If the CAISO determines that the allocation on a particular path is not feasible to meet a local requirement, then it would allocate first based on 'evergreen' priority, and then based on the load share percentage. LSEs could trade and sell their load share provision on a path in advance of the determination for feasibility, but reselling or re-trading would not be allowed. (D.05-10-042, p. 56. Underlining added.)

¹ Option 3 was presented as a straw proposal by Southern California Edison Company (SCE), which was in turn based on a proposal by FPL Energy. When it presented Option 3, SCE stated that it "offers the following alternative means of resolving import capacity accounting issues for RAR. We invite comment, and do not, at this time, represent this as an SCE recommended approach, but rather as a [sic] alternative with desirable properties that we are considering, as should others." (Phase 2 Workshop Report, supplemental appendix served by Energy Division e-mail dated June 17, 2005.)

3. PG&E's Petition

PG&E filed its petition seeking modification of D.05-10-042 on December 19, 2005, following a December 9 Energy Division workshop on RAR compliance during which problems with the reselling/re-trading restriction were discussed. PG&E requests that the restriction on reselling and re-trading import capacity be eliminated. PG&E believes that there is no reason to restrict resale or re-trading, and that permitting LSEs to resell and re-trade their allocations will optimize use of available import capacity and therefore further RAR goals.

The Alliance for Retail Energy Markets (AReM), the Division of Ratepayer Advocates, Powerex Corp., San Diego Gas & Electric Company, SCE, the Utility Reform Network, and the Western Power Trading Forum (WPTF) filed timely responses to PG&E's petition.² Each of these parties supports PG&E's petition. No opposition or objection to the petition has been filed.

4. Discussion

PG&E's petition and the responses to it reveal that the concerns about market power that led SCE to include the prohibition on reselling and re-trading import capacity in its straw proposal have been resolved. SCE states in its response to the petition that "[i]n light of the other measures instituted by the Commission in [D.05-10-042], there is no need for the restriction." (SCE's response, p. 7.) We are persuaded that the restriction is not necessary, and it may lead to suboptimal use of import capacity. We will therefore remove it.

PG&E proposes to accomplish removal of the restriction by changing the decision's description of Option 3. This description was drawn from the Phase 2

² By ruling dated December 23, 2005, the Administrative Law Judge (ALJ) granted PG&E's request to shorten time for responses to the petition to January 5, 2006.

Workshop Report, and PG&E in effect asks that we rewrite that report and the underlying proposal. We will take a different approach by leaving the description of Option 3 unchanged and instead add language to the discussion at page 57 that indicates we are adopting Option 3 as modified to eliminate the prohibition on reselling and re-trading import capacity. In addition, we will delete language that was associated with adoption of the reselling/re-trading restriction. Finally, we note that PG&E proposes modification of Finding of Fact 28, but it is apparent that Finding of Fact 26, not 28, should be modified.³

WPTF believes that there is a “minor ambiguity” in the petition regarding who can participate in the trading and re-sales. Specifically, WPTF notes that it is not clear whether the sales, trading, re-sales, and re-trades that would be allowed are limited to LSEs or open to all market participants. WPTF suggests that it be the latter, and proposes that PG&E’s proposed addition to Finding of Fact 26 be modified to read as follows (underlining indicates language proposed by WPTF):

Import allocations may be traded, sold, re-traded and resold
by and among all market participants.

WPTF states that it has had informal discussions with PG&E and that PG&E would not oppose such a clarification. As WPTF points out, it is understood that the PG&E proposal does not relate to actual transmission rights at inter-ties but rather to the allocation of such capacity for the purpose of what an LSE can count towards its RAR. According to WPTF, if trading of inter-tie capacity were available to all market participants, for example, an importer could not only sell capacity and energy to an LSE, but also a guarantee the LSE could

³ PG&E’s attorney confirmed this with the ALJ.

count the entire import quantity because the importer had obtained the “counting rights” at an inter-tie. We concur that this could be a beneficial market efficiency and will therefore adopt it.

5. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief sought. Accordingly, pursuant to Public Utilities Code Section 311(g)(2) and Rule 77.7(f)(2) of the Rules of Practice and Procedure(Rules), the 30-day public review and comment period for draft decisions may be reduced or waived. The draft decision was issued for comment on January 12, 2006, and the comment period was reduced to enable Commission consideration of the draft decision on January 26, 2006. Comments were timely filed on January 20, 2006 by _____.

Pursuant to direction in the ALJ’s December 23, 2005 ruling shortening the time for responses to the petition, PG&E filed a motion for a determination that “public necessity” exists within the meaning of Rule 77.7(f)(9) and justifies shortening the public comment period in the event the petition is contested. Since the petition was not contested, and Rule 77.7(f)(2) is applicable, it is not necessary to rule on the motion. It will therefore be dismissed as moot.

Findings of Fact

1. There is no need to continue the restriction on reselling and re-trading import capacity, and the restriction could lead to suboptimal use of import capacity.

2. This is an uncontested matter in which the decision grants the relief sought.

Conclusions of Law

1. The prohibition on reselling and re-trading import capacity should be eliminated.

2. D.05-10-042 should be modified to the extent provided herein.
3. PG&E's motion for determination of public necessity is moot and should therefore be dismissed.

O R D E R

IT IS ORDERED that:

1. The December 19, 2005 petition of Pacific Gas and Electric Company (PG&E) for modification of Decision (D.) 05-10-042 is granted to the extent provided herein.

2. D.05-10-042 is modified as follows:

- a. The first sentence of the last paragraph at page 57 is modified to read as follows (additional language is underlined):

It is also our judgment that the third option is the most appropriate approach for allocating import capability among LSEs, provided, however, that we will not adopt the proposed restriction on reselling and re-trading import capacity rights.

- b. The last sentence of the last paragraph at page 57 is modified to read as follows (deleted language is struck through):

We note that it avoids the problem of LSEs with unneeded allocations withholding unused capacity ~~as well as market power issues that could be associated with a secondary market for import capacity rights.~~

- c. Finding of Fact 26 is modified to read as follows (additional language is underlined):

The third option for allocating to LSEs the CAISO-determined level of import capacity, which uses each LSE's share of CAISO system peak load and includes an evergreen (grandfather) priority, is reasonable and should be adopted, provided, however, that import allocations may be traded, sold, re-traded and resold by and among all market participants.

3. PG&E's December 29, 2005 motion for a determination of "public necessity" within the meaning of Rule 77.7(f)(9) is dismissed as moot.

This order is effective today.

Dated _____, at San Francisco, California.